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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

T.G., et al., Petitioners, v. THE SUPERIOR COURT OF SANTA CLARA COUNTY Respondent; SANTA CLARA COUNTY DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES, Real Party in Interest.	No. H046322 (Santa Clara Super. Ct. No. 17-JD-023784)

T.G. (father) and C.G. (mother) are the parents of seven-year-old I.G. (born in November 2011) and one-year-old H.G. (born in November 2017). They each petition for extraordinary writ relief from an order setting a hearing under Welfare and Institutions Code section 366.26[1] to terminate their parental rights. (Cal. Rules of Court, rule 8.450 et seq.) We will deny the petitions.

Background

In March 2016, the Santa Clara County Department of Family and Children's Services (Department) filed a petition alleging that I.G., then four years old, came within

[1] All further statutory references are to the Welfare and Institutions Code.

the provisions of section 300, subdivision (b) [failure to protect]. In the petition, amended to conform to the juvenile court's findings in June 2016, the Department alleged that I.G. was at risk of harm in the parents' care due to mother's "ongoing mental health problems," exposure to the parents' domestic violence, and father's failure to protect I.G. The juvenile court found the allegations in the amended petition to be true, declared I.G. a dependent of the court, and ordered family maintenance services.

In June 2017 I.G. was taken into protective custody and the Department filed a supplemental petition under section 387. It alleged that the previous disposition had not been effective in protecting I.G. due to mother's "severe mental illness" which she refused to treat, father's minimization of the risks posed by mother's "bizarre and unpredictable behaviors," his lack of insight into those risks, and his failure to protect I.G. from mother.

In August 2017, after a contested jurisdiction/disposition hearing, the juvenile court found that the allegations of the section 387 petition were true as alleged and that the previous disposition had not been effective. I.G. remained in out-of-home placement. The court ordered family reunification services for the parents and set a 60-day interim review hearing to assess their compliance with the reunification plan, as well as a six-month review of family reunification under section 366.21, subdivision (e). This court affirmed the dispositional order in *In re I.G.*; *DFCS v. C.G. et al.* (Oct. 19, 2018, H045169) [nonpub. opn.].

The report for the interim review hearing recommended that the parents continue to receive family reunification services and that all prior orders remain in effect. The social worker stated that the parents had continued to resist case plan services, including parenting classes. Mother's treating psychiatrist, Masaru Fisher, M.D., had recommended that mother find a separate therapist; father had not completed a psychiatric evaluation. Neither parent had provided documentation showing participation in individual therapy or couples counseling. Both parents had shown "outright

opposition towards the visitation process." Overall, the social worker believed that the parents had continued to minimize the factors that had brought I.G. into the dependency system. Instead of working on their case plan and improving their parenting skills, they had engaged in "tactics through false allegations of this county worker and to discredit all parties involved by threatening to file law suits [*sic*] and file claims for the purpose of professionals losing their jobs." This conduct convinced the social worker that "the parents may not be focused on getting [I.G.] returned to them but they are more interested in creating a cloud of confusion and fear for those involved in their case."

On October 10, 2017, the juvenile court held an interim review hearing. At the conclusion of the hearing, the court ordered all previous orders to remain in effect. Father appealed from this order, challenging the sufficiency of the evidence to support it. This court affirmed the order in *In re I.G.*; *DFCS v. T.G.* (Dec. 20, 2018, H045337) [nonpub. opn.].

I.G.'s sister, H.G., was born in November 2017 and declared a dependent on March 1, 2018. The parents offer no transcript of the dependency proceedings taking place after H.G.'s birth; the earliest record we are provided is the May 15, 2018 interim review report. By this time both children were in separate confidential foster homes. At a six-month review hearing for I.G., the court had ordered a neurological and neuropsychological assessment for father; a psychological evaluation and psychiatric oversight for mother; and for both parents, counseling or psychotherapy, couples counseling, and parenting classes. Mother was also ordered to complete a substance abuse assessment, drug treatment, and on-demand drug testing,

In her May 15, 2018 report, the social worker stated that the parents had been struggling to find stable housing. In April father had indicated that they were not ready for the children to be returned; mother disagreed. She threatened to sue the Department if the minors were not returned on May 15. Father had attended two out of five sessions since he started counseling on March 26. Mother had been terminated from her therapist

in March because she missed too many sessions; she had been referred to a new provider, but they had unsuccessfully attempted seven times to contact her to confirm a start date. (Mother denied having been contacted.) The parents had completed a Triple P Parenting class, but they had not progressed beyond an intake appointment for couples counseling.

The social worker observed father to be the primary caregiver during visits, both with respect to feeding and changing H.G. and in playing with and feeding I.G. The social worker also noted that I.G. "most often does not respond to the mother's cues and the mother is also observed to not respond to [I.G.'s] cues." I.G. became upset when the parents focused on the baby and did not respond to her overtures toward them. The parents missed several visits and were late to others, all of which caused I.G. emotional distress. The parents did not believe they needed to confirm their attendance at scheduled visits; they expressed the view that they could have "facetime calls" with I.G. if they missed a visit.[2]

In late August of 2018 the social worker signed a status review report for H.G., then nine months old, in which she recommended termination of the parents' reunification services and the setting of a permanency planning hearing under section 366.26. The report was not filed until October 23, the day a hearing began on H.G.'s six- month status review and I.G.'s 12-month status review. On that day Michele Dove, the newly assigned social worker, filed an addendum report, recommending termination of services for both children. She had met with the parents in September; they told her that they had completed all of the court-ordered services, but they had not signed releases to enable the social worker to communicate with the service providers. The parents also asserted that all of the past involvement of the Department had been based on reports that were "inaccurate or actual lies."

[2] On August 9, 2018, while the minors were visiting relatives in New Jersey, the social worker filed a request to change the visitation order to ensure that telephone and "FaceTime" calls with the minors were supervised. The court granted the request.

Dove pointed out that the minors "are young children and they need a safe and stable environment in which to grow and thrive." In her view, the parents were "not in a position to provide that safety or stability." She related incidents that concerned her regarding mother's mental health and ability to care for the children: for example, mother appeared to need to be physically close to father at all times or she became anxious; she started to cross the street with H.G. against the light; over breakfast she became agitated and asked father to call the police when she imagined that other diners were being aggressive and threatening her, though they were not looking her way. Father had continued to minimize the state of mother's mental health and not to understand the extent to which she depended on him. Although the parents had completed a parenting class and engaged in therapy, in Dove's view those services had not resulted in a change in behavior or management of "the issues that [had] brought the children into the system."

Dove acknowledged that the parents genuinely loved the children and that they had "made efforts to address the issues that brought their children into the system but, unfortunately, [they] have not been able to sustain stability over a period of time with regard to housing, income, mental health or services. Even with participation in services, the parents have not demonstrated understanding with regard to how their choices and behaviors have had a negative impact on their children and their lives. The parents tend to externalize blame for their circumstances and have demanded to have their social worker changed a number of times and also request to have their case transferred when they move from county to county. From the parents' own account, they have lived in four or five different counties over the last year."[3] In light of these ongoing

[3] The social worker reported that on September 14, 2018, they had been living in Napa for six weeks. On September 25 they reported finding a home in Patterson. "In addition to these recent moves, the parents have lived in Palo Alto, two different

circumstances, the social worker believed that it was in the minors' best interests for reunification services to be terminated and for the minors to remain in their current placement with their maternal relatives in New Jersey.

The review hearing took place on October 23, 24, and 25. Father was representing himself at this point; he cross-examined Michele Dove extensively regarding the matters covered in the Department's recent reports to the court. She was able to state that she did not believe that I.G. had a close relationship with mother and that mother did not seem to recognize the severity of her "mental health issues." Although mother had made progress in parenting classes, she did not appear to be applying it in visits. Contrary to Department rules and a court order, the parents inappropriately continued to discuss the case with I.G., which distressed the child. They also needed prompting to change H.G.'s diaper and feed the children. Father had attempted to intervene when mother made I.G. upset during visits, but his interventions were not effective, and if the children were returned to the parents, he would not be able to monitor mother's interactions with the children and intervene when necessary. Father's agreement not to leave the children alone with mother was an inadequate safety plan; it was insufficiently detailed, and it was similar to previous safety plans, which had been ineffective because father had still left the children with mother a number of times—on some occasions resulting in Department intervention. Both parents appeared to be more focused on denying that there had ever been problems requiring Department involvement; that resistance would tend to interfere with a parent's engaging in services and addressing the target issues.

The previous social worker, Sarah Arana, also testified regarding confirmation of couples counseling, restrictions on and adjustments to visitation, past efforts to obtain

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addresses in San Jose, Marin and San Francisco." This instability in housing "affects the parents' ability to engage in and maintain services."

psychiatric evaluations, and the safety of the children in the parents' care.[4] Arana confirmed that the parents often missed visits for multiple reasons; some were simply "no shows and no calls." Father had been denied unsupervised visits because he had engaged in some unsafe interactions with H.G., because he needed prompting to do her diaper changes, and because he exhibited a lack of awareness of I.G.'s emotional needs.

Father, an attorney, testified by answering questions he asked himself. He stated that the Department had not provided reasonable services: It had not addressed mother's mental health condition by arranging a psychiatric evaluation, it had not referred mother for a "pharmalogical [*sic*] assessment," and it had not acknowledged that it was physically difficult for mother to participate in services while she was pregnant with H.G. in the fall of 2017.[5] He asserted that both he and mother "did extremely well" in their parenting class, and he did apply what they had learned. In addition, both parents had completed a domestic violence assessment and some couples counseling, mother had completed several counseling sessions, and she had received some treatment from Dr. Fisher. Father denied that the Department had ever provided reasonable visitation to the family; it was never increased over a full year and he was denied separate visits with I.G. Although he had been allowed unsupervised visits, those deprived mother of her own time with I.G.

On cross-examination father acknowledged the frequency of his multiple moves: before his current residence in Patterson as of about a week ago, he had lived in San Francisco with friends, in Novato for a couple of months, and a few months in

[4] Both social workers were recognized as experts in risk assessment and placement of dependent children.

[5] Father actually testified that it was difficult for mother to participate in services while she was pregnant in the fall of 2018, but on cross-examination he agreed that he was referring to her pregnancy with H.G., which was the fall of 2017.

San Jose.[6] He said that "a lot of times" he had to stay in hotels. He acknowledged that mother had a severe mental illness, notably anxiety disorder and Attention Deficit Disorder. However, she was under psychiatric care and she was consistently taking her medication for those conditions.

Mother also took the stand. She testified that she was taking Adderall and Lexapro and was currently engaged in individual psychotherapy and couples counseling. She told the court that before Arana took over the case, the assigned social worker looked up her skirt and put his hand on her thigh.

After hearing closing argument from all parties, the court adopted the recommendations of the Department and terminated reunification services as to both children. By clear and convincing evidence it found that reasonable services had been offered or provided to both parents. It had "considered the efforts and progress demonstrated by the parents to the extent which they have availed themselves of services." Those efforts, however, "ha[d] not been sufficient to sustain stability over a significant period of time." The issues that had first brought the family into the dependency system—mother's "severe mental issues" and father's minimization of those issues—were "still the case today." The court took note of mother's "erratic behavior" during visits with the children "and even here in court."[7] The court saw evidence of "delusional thinking, evidence of an obsessive need to be near and with [father], [and] an inability to acknowledge boundaries or follow appropriate directions." It also found "evidence that she is limited in her parenting skills and not able to be responsive to the

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[6] In his petition father informs this court that the parents now live in Patterson, California; he adds that they intend "to transfer this case to Stanislaus County since Patterson is approximately a hundred miles away."

[7] Mother was repeatedly admonished by the court for talking during the presentation of testimony. At one point she was directed to leave the courtroom because she was so disruptive. After re-entering the courtroom, she had to be warned multiple times that she could be sent out again.

children's needs. And I think there is a significant concern of a potential personality disorder that's been identified and it takes long-term therapy with significant engagement and motivation to bring that situation into a sustained stability. And I don't think that these parents have that ability. [¶] I think [father] fails to recognize the serious risk posed by [mother]. I think their level of entrenchment and enmeshment between the parents . . . heightens the risk."

The court thus found that returning the children to the parents "would create a substantial risk of detriment to their safety." Specifically as to H.G, who was less than three years old when taken into protective custody, the court found by clear and convincing evidence that the parents had "failed to participate on a regular basis and make substantive progress in the court-ordered treatment plan and there's not a substantial probability that [H.G.] will be returned to them within six months."

The court therefore ordered a selection and implementation hearing within 120 days pursuant to section 366.26. Both parents seek writ review of that decision.[8]

Discussion

Both parents contend that reasonable reunification services were not provided to them. Both argue that they nonetheless participated in the services that were offered; father asserts that they had completed "almost all their parenting plan," and mother insists that they had made substantive progress in their court-ordered treatment. Mother seeks more time to reunify with H.G., while father demands return of both children to parental custody under a safety plan he had previously devised.

1. Scope of Review

Mother correctly recognizes the statutory constraints on judicial oversight of reunification between dependent children and their parents. At the six-month review

[8] Mother also requests a stay of "the commencement of the § 366.26 hearing until this proceeding is concluded." The request is moot, as our decision will be final before the scheduled hearing is to begin.

hearing following a dispositional order removing a child from parental custody, the juvenile court must order the return of the child to his or her parents unless the court finds, by a preponderance of the evidence, that the return of the child "would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.21, subd. (e)(1). The parent's failure to participate regularly and make substantive progress in court-ordered treatment programs "shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and [it] shall consider the efforts or progress, or both, demonstrated by the parent . . . and the extent to which he or she availed himself or herself of services provided." (§ 366.21, subd. (e)(1).)

However, for a child such as H.G. who was younger than three years old when initially removed, the juvenile court may terminate services and schedule a permanency planning hearing within 120 days after the six-month review if it finds "by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan." (§ 366.21, subd. (e)(3).) On the other hand, if the court finds a "substantial probability that the child . . . may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing." (*Ibid*.)

" 'Thus, there are two distinct determinations to be made by trial courts applying the third paragraph of section 366.21, subdivision (e). First, the statute identifies specific factual findings—failure to participate regularly and make substantive progress in the court-ordered treatment plan—that, if found by clear and convincing evidence, would *justify* the court in scheduling a .26 hearing to terminate parental rights. But this inquiry does not *require* the court to schedule a .26 hearing . . . Instead, it authorizes the court to set such a hearing if the required findings have been made.' . . . [¶] 'The second

determination called for by the third paragraph of section 366.21, subdivision (e), protects parents and guardians against premature .26 hearings. Notwithstanding any findings made pursuant to the first determination, the court shall not set a .26 hearing if it finds either (1) "there is a substantial probability that the child . . . may be returned to his or her parent . . . within six months . . ."; or (2) "reasonable services have not been provided . . ." to the parent. (§ 366.21, subd. (e).)' " (*Fabian L. v. Superior Court* (2013) 214 Cal.App.4th 1018, 1027-1028 (*Fabian L.*), quoting *M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 175 (*M.V.*).)

We review a juvenile court's factual findings, such as the determination that the Department has made good faith efforts to provide reasonable services, for substantial evidence. (*T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1238.) Its decision based on those findings is reviewed for abuse of discretion. (*San Joaquin Human Services Agency v. Superior Court* (2014) 227 Cal.App.4th 215, 223.) In determining whether substantial evidence supports the order, "we review the record in the light most favorable to the court's determinations and draw all reasonable inferences from the evidence to support the findings and orders. [Citation.] 'We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.' [Citation.]" (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688-689; accord, *Fabian L.*, *supra*, 214 Cal.App.4th at p. 1028.)

2. Termination of Services for H.G. at the Six-Month Review Hearing

Mother contends that the juvenile court should have granted six more months of services designed to reunite H.G. with them. Both parents maintain that there is no substantial evidence supporting the court's finding that they failed to participate regularly in services; mother adds that she made substantive progress in the court-ordered treatment plan. However, "[t]he ' "unique developmental needs of infants and toddlers" ' . . . justifies a greater emphasis on establishing permanency and stability

earlier in the dependency process " 'in cases with a poor prognosis for family reunification." ' [Citation.]" (*M.V., supra,* 167 Cal.App.4th at pp. 174-175.)

In her petition mother admits that the children were not safe in her care alone; she suggests, however, that this concession "shows that the parents had made substantive progress." We cannot agree. Mother was still suffering from a long-term mental condition that impaired her ability to respond to the children successfully.[9] Her behavior during visits was, as the court expressed it, "erratic." Father's "entrenchment" with mother, together with his minimization of the risk she posed to the children, augmented

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[9] A court-appointed psychologist, Brenda Hart, Ph.D., examined mother (accompanied by father) on May 10, 2018, and completed her report—which has been included in the appellate record by augmentation—the next day. She outlined the previous opinion by Dr. Fisher, who had recommended an anti-psychotic medication to control the "psychotic features" of mother's condition. Mother was "highly guarded" about her personal history, continually interrupted Dr. Hart, and was highly distracted by her husband's texting or looking at his phone, which made it difficult for the evaluation to proceed. Dr. Hart found it impossible to complete any standardized testing, due to mother's "extreme level of preoccupation with her husband and apparent need to have his constant and unceasing attention and affection." This preoccupation "severely impacted her capacity to focus on anything else for longer than a few seconds." Dr. Hart nevertheless found mother's executive and emotional functioning to be "[s]everely [i]mpaired," with a "poor capacity for insight and judgment" and "significant irritability, agitation, an unrealistic self-presentation, and distractibility." She noted that mother exuded a "significant body odor" and at times seemed "immature and child-like." Her speech seemed scripted when asserting her rights or describing injustices she had experienced, and at times she simply echoed father's words. Mother's "thought processes," Dr. Hart added, "were very easily distracted by her husband and seemed disorganized and irrelevant at times." She appeared to have "deep abandonment issues" which she defended against with "overly controlling and overly demanding behaviors and a child-like dependency."

With only a "provisional" diagnostic impression due to mother's lack of cooperation, Dr. Hart suggested that mother might have Borderline Personality Disorder, which is a "quite challenging" diagnosis for therapists to work with and requires "frequent, consistent, long-term therapy with a professional trained in BPD." Substantial improvement, she noted, "may not occur until after approximately one year of consistent therapy, and many patients require longer treatment to see substantial improvement."

the danger to the children's emotional and physical safety. The court's findings were supported by the written reports and oral testimony of the social workers involved in the case. The parents had continued to blame the Department for their lack of progress, insisting that the issues identified by the social workers were based on inaccuracies and lies, including "faked" photos.[10] Mother's October 7, 2018 attempt to cross the street with H.G. against the traffic light was followed by agitation during breakfast because she imagined aggressive behavior from strangers.

In addition, although they claimed below (and father continues to assert) that they had complied with their reunification plan, substantial evidence supports the court's findings that the parents had failed to participate regularly in services: They had missed scheduled visits without notifying the social worker, they believed that they could substitute FaceTime for in-person visits, and they had resisted supplying documentation to support their claim that they had complied with the psychotherapy and couples counseling condition. In any event, even if the parents' voluntary participation could be deemed adequate under the circumstances, the lack of substantial progress was sufficient to justify terminating services. Father offers no argument in his petition that substantive progress had in fact been made; he apparently rests his position on the premise that the children's safety was not in jeopardy.

3. Reasonable Services

Unquestionably the Department was required to make " '[a] good faith effort' " "to provide reasonable services responding to the unique needs of each family." (*In re Monica C.* (1995) 31 Cal.App.4th 296, 306; accord, *In re T.G.* (2010) 188 Cal.App.4th 687, 696 (*T.G.*) [reunification plan must be appropriately based on the particular family's

[10] During the May 2018 examination, the parents told Dr. Hart that there had been "no evidence of neglect or abuse of their daughter." The dependency proceedings, they stated, were " 'abusive' " and " 'a gross injustice.' "

unique facts].) Accordingly, the adequacy of the reunification plan and the reasonableness of the Department's efforts are judged according to the circumstances of each case. (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) "Such circumstances necessarily include the mental condition of the parent, [the parent's] insight into the family's problems, and [his or] her willingness to accept and participate in appropriate services." (*In re Christina L*. (1992) 3 Cal.App.4th 404, 416.) The program in which the parent is directed to participate "shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300." (§ 362, subd. (d).) " ' "[T]he record should show that the [Department] identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult . . . ." ' " (*T.G*., *supra*, at p. 697.)

Both parents maintain that they did not receive reasonable services. However, Sarah Arana testified that more than 20 referrals were made for services, including substance abuse assessment, couples therapy, and referrals to obtain funding for therapy. Between their first meeting in February of 2018 and the end of March, Arana referred each to therapy. Although no psychiatric evaluation had been ordered by the court in 2018, the Department had made a referral for such an evaluation in 2017, which resulted in a report by Dr. Fisher. Arana also referred mother to Medi-Cal to assist with payments for treatment.

Father devoted much of his cross-examination of Arana to a period in 2013, when the parents were involved with San Mateo County services. His cross-examination did not result in sustainable challenges to the Department's referrals for psychiatric treatment and counseling because the parents had not provided the necessary releases to confirm their participation. As for visitation, father was unable to elicit testimony showing that the frequency and duration of scheduled visits were inadequate in this case. Arana also

noted that even with visitation occurring twice a week the parents missed visits "for multiple reasons."

We thus conclude that substantial evidence supports the juvenile court's finding that the parents were provided with reasonable services. That additional services might have been possible, or that the services provided were not the services the parent thought were best for the family, does not render the services offered or provided inadequate. "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

While both parents acknowledge in their petitions that the children were not safe when mother is alone with them, father insists that in the interests of family preservation, the children should be returned with a safety plan. But the court regarded this position as evidence that father had continued to minimize the risk posed by mother. The parents had failed to adhere to a safety plan before, and mother had exhibited behavior that was harmful to I.G. even during supervised visits. Father's suggestion that mother's intention to continue seeing her current psychiatrist "is essentially a safety plan that protects the children" is completely unconvincing and (like most of father's petition) unsupported by any citation to evidence in the record.

Given the evidence before it, including the history of the family's involvement in the dependency system over the previous five years, the court did not err in finding clear and convincing evidence that reasonable services had been offered or provided to the parents, that they had failed to make substantive progress toward reunification, and that there was no substantial probability that the minors could be safely returned to the parents within six months. The court did not abuse its discretion in terminating services at the October 25, 2018 hearing.

Disposition

The petitions for extraordinary writ are denied. Mother's request for a temporary stay is denied as moot. Our decision is immediately final as to this court. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

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ELIA, ACTING P. J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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MIHARA, J.

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